

REMARKS/DISCUSSION OF ISSUES

Claims 1, 3, 4, 6-9, 11, 12, 14, 17 and 18 are pending in the application.

Applicant acknowledges the indication that claims 7, 8, 17 and 18 are allowed.

Claims 3, 6, 11 and 14 are not subject to any rejections, but are stated to be subject to objection. Although the Office Action does not explicitly state so, Applicant understands that claims 3, 6, 11 and 14 are simply rejected for depending upon rejected base claims, and that these claims would be allowed if rewritten in independent form including all features of their respective base claims, and any intervening claims. **Clarification of this understanding is respectfully requested.**

Reexamination and reconsideration are respectfully requested.

35 U.S.C. § 103

The Office Action rejects claims 1, 4, 9 and 12 under 35 U.S.C. § 103 over Bearden et al. U.S. Patent Application Publication 2004/0062204 ("Bearden") in view of Kung et al. U.S. Patent 6,381,220 ("Kung").

At the outset, Applicant relies on at least on the following standards with regard to proper rejections on obviousness grounds. First, the Office Action must establish the level of ordinary skill in the art of invention. See M.P.E.P. §§ 2141(II)(C) and 2141.03. Also, a rejection on obviousness grounds under 35 U.S.C. § 103 cannot be sustained by mere conclusory statements: instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. In re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also KSR International Co. v. Teleflex Inc., 550 U.S. 398, 82 USPQ2d 1385, 1396 (2007) (quoting Federal Circuit statement with approval). Furthermore, the prior art reference (or references when combined) must teach or suggest all of the claim features. "*All words in a claim must be considered in judging the patentability of that claim against the prior art.*" MPEP § 2143.03 (citing In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970)).

Applicant respectfully traverses these rejections for at least the following reasons.

Claim 1

Among other things, the method of claim 1 includes transmitting a respective telephone number from a network troubleshooting center (NTC) to a plurality of network analyzers (NAs) monitoring communication lines through which Voice-over-Internet Protocol (VoIP) data streams are transmitted.

Applicant respectfully submits the combined cited art does not teach any method that includes this feature.

The Office Action states, at page 3, lines 1-4, that Bearden “*disclosed the method of transmitting a respective telephone number from a network troubleshooting center (NTC) (Bearden et al. fig. 1, Testing Server 104) to a plurality of network analyzers (NAs) (Bearden et al. fig. 1, endpoint devices 102).*”

Applicant respectfully disagrees. Applicant respectfully submits that Bearden does not teach that Testing server 104 communicates to endpoint devices 102 any telephone number whose calls are to be monitored – nor would there even be any reason to do so, as endpoint devices 102 only monitor synthetic calls generated by that endpoint device itself for the purpose of being monitored.

Subsequently, on page 3, lines 17-20, the Office Action states that Bearden “*did not expressly disclose the feature of transmitting information indicating a respective telephone number*” but that Kung did disclose this feature. The Office Action further states that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Bearden to include this feature “*being that it provides real-time and full time monitoring capabilities.*”

Applicant respectfully traverse the proposed modification of Bearden based on Kung for at least the following reasons.

As noted above, a rejection on obviousness grounds under 35 U.S.C. § 103 cannot be sustained by mere conclusory statements: instead there must be some articulated reason with some rational underpinning to support the legal conclusion of obviousness.

Applicant respectfully submits that the Office Action provides only a conclusory statement in support of the proposed modification, and not an articulated reason with

some rational underpinning.

The Office Action does not provide any support for the statement that the proposed modification of having Bearden send telephone numbers from its testing server 104 to its endpoint devices 102 would “*provide real-time and full time monitoring capabilities*” or explain how or why this is expected to be the case. What does transmitting a telephone number have to do with whether or not Bearden’s endpoint devices 102 provide real-time and full time monitoring capabilities? Indeed, Applicant respectfully submits that Bearden already provides real-time and full time monitoring capabilities. Furthermore, as explained above, Bearden’s endpoint devices 102 are only configured monitor synthetic calls generated by that endpoint device itself for the purpose of being monitored. How would these devices 102 even collect QOS for calls associated with a received telephone number? And where does Bearden or Kung even suggest collecting QOS data for calls associated with a telephone number communicated to a network analyzer?

So Applicant respectfully submit that there is no reason why anyone of ordinary skill in the art would at the time the invention was made have modified Bearden to transmit a respective telephone number from a network troubleshooting center (NTC) to a plurality of network analyzers (NAs) monitoring communication lines through which Voice-over-Internet Protocol (VoIP) data streams are transmitted – without resorting to the teachings of Applicant’s own specification.

Applicant also notes that the FINAL Office Action fails to establish the level of skill in the art – as is required under M.P.E.P. §§ 2141(II)(C).

Therefore, for at least these reasons, Applicant respectfully submits that claim 1 is patentable over the cited art. Accordingly, Applicant respectfully requests that the rejection of claim 1 be withdrawn, and that claim 1 receive an early allowance.

Claim 4

Claim 4 depends from claim 1 and is deemed patentable for at least the reasons set forth above with respect to claim 1.

Claim 9

Among other things, the apparatus of claim 9 includes a network

troubleshooting center (NTC) for transmitting a telephone number; and a plurality of network analyzers (NAs) for monitoring respectively corresponding communication lines through which Voice over Internet Protocol (VoIP) data streams are transmitted, wherein, after receiving the telephone number, the NAs collect quality of service data for data streams associated with a telephone call.

For similar reasons to those set forth above with respect to claim 1, Applicant respectfully submits that claim 9 is patentable over the cited art. Accordingly, Applicant respectfully requests that the rejection of claim 9 be withdrawn, and that claim 9 receive an early allowance.

Claim 12

Claim 12 depends from claim 9 and is deemed patentable for at least the reasons set forth above with respect to claim 9.

CONCLUSION

In view of the foregoing explanations, Applicant respectfully requests that the Examiner reconsider and reexamine the present application, allow claims 1, 3, 4, 6-9, 11, 12, 14, 17 and 18 and pass the application to issue. In the event that there are any outstanding matters remaining in the present application, the Examiner is invited to contact Kenneth D. Springer (Reg. No. 39,843) at (571) 283.0720 to discuss these matters.

Respectfully submitted,

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Date: 11 June 2009

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